

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Innovation in the Broadcast Television Bands:)	
Allocations, Channel Sharing and)	ET Docket No. 10-235
Improvements to VHF)	
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REPLY COMMENTS OF THE WALT DISNEY COMPANY

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Executive Summary

The Walt Disney Company (“Disney”), by its attorneys, respectfully submits the instant reply comments, on behalf of the ABC Owned Television Stations, in the instant proceeding in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on various proposals that would enable it to repurpose a portion of the UHF and VHF frequency bands currently used by broadcast television stations for flexible use by fixed and mobile wireless communications services. As explained herein, the experiences of the ABC Owned Television Stations – all of which use or have used VHF channels for their digital broadcasts – with the digital television (“DTV”) transition provide evidence of the challenges of using VHF spectrum to provide over-the-air DTV service. Indeed, since the DTV transition, WABC-TV (New York, New York), WLS-TV (Chicago, Illinois), WPVI-TV (Philadelphia, Pennsylvania), and WTVD(DT) (Raleigh-Durham, North Carolina) have suffered significant obstacles to providing reliable over-the-air DTV service to their respective former analog viewing areas. Although the power levels currently authorized for the ABC Owned Television Stations following the DTV transition have improved service to viewers, additional power is required for these stations to improve service to their former over-the-air analog viewing areas in a meaningful manner.

Unfortunately, the current FCC rules governing maximum power levels for VHF stations, as well as the rules governing interference, have hampered the ability of the ABC Owned Television Stations to completely restore television service throughout their viewing areas. The Commission’s proposal to increase the maximum effective radiated power permissible for Zone I television stations, while helpful to a degree, is of limited benefit due to the restrictions on interference to adjacent and co-channel operations. Given these constraints, for VHF stations currently operating in the overcongested spectrum of the Northeast corridor and other major metropolitan areas like Chicago, the Commission should consider waivers of the interference rules on a case-by-case basis where such waivers would serve the public interest by enabling a station to restore service to virtually all of its former analog viewing area.

Disney understands and appreciates the need to expand wireless broadband services. Importantly, however, before permitting any additional stations to relocate to VHF spectrum, the FCC should ensure that television stations currently operating on all channels throughout the VHF band (including channel 6) have had the opportunity to restore service to their former analog viewing areas, (e.g., through power increases, case-by-case waivers of the interference rules or relocation to UHF channels when and if such channels become available). The Commission should avoid taking any action that would enable a station that has been adequately serving its former over-the-air analog viewing area since the DTV transition to increase its power or to relocate to the VHF band at the expense of the ability of a station that has not yet resolved the VHF reception problems suffered by its viewers.

In addition, Disney agrees with the comments of NAB/MSTV that the FCC should consider mandatory labeling of antennas as a means to advise consumers of the bands that a particular antenna can receive. The Commission also should require that antennas marketed to consumers meet established standards for reception of both VHF and UHF channels alike. The FCC also should require that antenna manufacturers implement a mechanism (e.g., labeling or

other means) to ensure that antennas are not marketed in markets where such antennas will be ineffective to receive the television stations in that market (i.e., an indoor antenna that is incapable of receiving VHF stations should not be marketed in television markets where any television station operates using VHF spectrum). These measures will enable consumers to purchase the appropriate indoor antenna based on viewing needs, thereby reducing consumer confusion.

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REPLY COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company (“Disney”), by its attorneys, respectfully submits the instant reply comments (“Reply Comments”), on behalf of the ABC Owned Television Stations,¹ in the above-captioned proceeding in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on various proposals that would enable it to repurpose a portion of the UHF and VHF frequency bands currently used by broadcast television stations for flexible use by fixed and mobile wireless communications services.² As described below, the experiences of the ABC Owned Television Stations with the digital television (“DTV”) transition provide evidence of the challenges of using VHF spectrum to provide over-the-air DTV service.³

¹ The ABC Owned Television Stations are located in the following markets: New York (WABC-TV), Los Angeles (KABC-TV), Chicago (WLS-TV), Philadelphia (WPVI-TV), San Francisco (KGO-TV), Houston (KTRK-TV), Raleigh-Durham (WTVD(DT)), and Fresno (KFSN-TV).

² See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Notice of Proposed Rulemaking, ET Docket No. 10-235 (rel. Nov. 30, 2010) (“Broadcast Spectrum NPRM”).

³ For additional examples of the obstacles faced by broadcasters using VHF spectrum to provide DTV service, *see, e.g.*, Comments of Cox Media Group, Inc. at 24; Comments of LIN Television Corporation at 13 and Comments of Belo Corp. at 13-15.

In order to effectuate the FCC's stated goal of treating all stakeholders fairly,⁴ it is critical that, before making efforts to improve VHF service in order to potentially pack more stations into the VHF band, the Commission ensure that television stations currently operating on all channels throughout the VHF band (including channel 6) have had the opportunity to restore service to their former analog viewing areas – e.g., through power increases, case-by-case waivers of the interference rules or relocation to UHF channels when and if such channels become available. In addition, in order to facilitate the purchase of appropriate antennas for reception of VHF television service by consumers, the Commission should explore mandatory labeling of receiving antennas as suggested by the National Association of Broadcasters (“NAB”) and the Association of Maximum Service Television (“MSTV”).⁵ In short, the Commission should avoid taking any action – in this proceeding or otherwise – that could further deteriorate the ability of television stations currently using VHF spectrum to provide a reliable over-the-air DTV signal to their viewers.

I. THE ABC OWNED TELEVISION STATIONS HAVE BEEN STRIVING SINCE THE DTV TRANSITION TO IMPROVE VHF SERVICE TO THEIR VIEWERS

The ABC Owned Television Stations have operated historically on VHF channels and most have continued to do so since the DTV transition on June 12, 2009. As explained below, since the DTV transition, WABC-TV (New York, New York), WLS-TV (Chicago, Illinois), WPVI-TV (Philadelphia, Pennsylvania), and WTVD-DT (Raleigh-Durham, North Carolina) have suffered significant obstacles to providing reliable over-the-air DTV service to their respective former analog viewing areas.⁶ Unfortunately, each of these stations effectively had no

⁴ See Broadcast Spectrum NPRM at para. 42

⁵ See Comments of NAB/MSTV at 22-23.

⁶ These Reply Comments focus on the experiences of WABC, WLS, WPVI and WTVD, as these particular ABC Owned Television Stations experienced (and continue to face) the greatest difficulties with the DTV transition. Indeed, as the Commission is well-aware,

choice but to elect to operate post-transition DTV facilities using VHF spectrum, rather than their pre-transition UHF channels, which were either out-of-core and thus had to be surrendered, or insufficient to provide adequate coverage without running afoul of the FCC's interference rules.

Since the DTV transition, Disney has worked with the FCC's Media Bureau to address VHF reception problems on an interim basis. The affected ABC Owned Television Stations have only recently obtained permanent authorizations to increase power to alleviate some of these VHF reception issues (e.g., construction permits and licenses to cover such permits). In many cases, although the power levels currently authorized for the ABC Owned Television Stations have improved service to viewers, additional power is required in order for these stations to improve service to their former over-the-air analog viewing areas in a meaningful manner. However, current FCC rules regarding maximum power levels and interference to adjacent and co-channel television operations limit the ability of the ABC Owned Television Stations to request the necessary power increases.

A. WABC-TV, New York, New York

WABC has served the New York, New York designated market area ("New York DMA") on channel 7 for over sixty years, commencing operations on August 10, 1948. WABC is the flagship station of the ABC Television Network and the sole ABC network station serving the New York DMA. Like many of the ABC Owned Television Stations, WABC was an early adopter of DTV technology, commencing operations with a full-power DTV facility on channel

following the DTV transition, a large number of viewers of WABC, WLS, WPVI, and WTVD were unable to receive reliable over-the-air digital signals due to the technical challenges associated with the VHF spectrum frequencies allotted to the ABC Owned Television Stations in these markets. As a result, these viewers no longer had access to ABC network or locally-produced programming (including news, emergency information, and other public affairs programming) received prior to the DTV transition.

45, its pre-transition channel, at the World Trade Center in 2001.⁷ After losing its original DTV facility on September 11, 2001, WABC constructed two replacement DTV facilities, first at 4 Times Square and subsequently at the Empire State Building.⁸ In addition, prior to the DTV transition, WABC maintained an auxiliary facility on channel 7 at Alpine Tower in the event of an emergency resulting in the loss of WABC service from other authorized sites.⁹

Although WABC was allotted an in-core UHF channel for pre-transition DTV operations, if it operated on channel 45 following the DTV transition, WABC would have suffered significant population losses as a result of at least two known interference conflicts with stations in adjacent markets.¹⁰ Accordingly, WABC elected to operate its post-transition DTV facilities on VHF channel 7, its pre-transition analog channel. On June 18, 2008, WABC obtained a construction permit for a post-transition DTV facility at the Empire State Building (the location from which it operated its post-9/11 DTV facility on channel 45) with 11.69 kilowatts (“kW”) effective radiated power (“ERP”).¹¹ This represented the largest facility WABC could operate without causing interference to any other DTV station in violation of the FCC’s interference rules.¹² WABC commenced operations of the aforementioned facility on June 12, 2009.¹³

Following its transition to all-digital broadcasts on June 12, 2009, WABC promptly learned that it could not serve many of its former over-the-air analog viewers with the WABC

⁷ See FCC File No. BLCDT-20010710ABU.

⁸ See FCC File Nos. BDSTA-20031024AAW (4 Times Square) and BXSTA-20040728APD (Empire State Building).

⁹ See FCC File No. BMDSTA-20040419ACL.

¹⁰ See Emergency Request for Waiver of American Broadcasting Companies, Inc. and WPIX, Inc., MB Docket No. 03-15, FCC File No. BFRECT-20050209AKQ (filed Aug. 15, 2005).

¹¹ See FCC File No. BPCDT-20080529AJT.

¹² On June 20, 2009, WABC also filed an application for a construction permit for post-transition DTV facilities at Freedom Tower (“Freedom Tower CP Application”). See FCC File No. BMPCDT-20090620AMV. WABC requested acceptance and delayed processing of the Freedom Tower CP Application.

¹³ See FCC File No. BLCDT-200906012ACL.

11.69 kW facility. Accordingly, WABC worked diligently with the Commission and other affected television stations to find a solution to the signal reception issues unique to VHF digital television service. To this end, on January 5, 2010, WABC entered into a complicated three-way interference agreement to enable each of WABC, WNJB, and WGAL to effectuate power increases in order to improve each station's respective coverage area. Pursuant to this interference agreement, on March 7, 2011, the Commission granted WABC's long-pending application for a construction permit to increase WABC's power to 26.9 kW.¹⁴

In order to further restore service to its former over-the-air analog viewing area, WABC must increase its power beyond the currently authorized 26.9 kW ERP.¹⁵ At this time, however, the FCC's existing interference rules constrain WABC's ability to apply for a further increase in power.

B. WLS-TV, Chicago, Illinois

For over sixty years, WLS operated on VHF channel 7 to provide over-the-air television service to viewers in the Chicago, Illinois area. WLS was initially assigned an out-of-core channel for its pre-transition DTV operations and, accordingly, elected to broadcast post-transition on VHF channel 7. On June 12, 2009, WLS commenced its post-transition DTV operations on channel 7 with 4.75 kW ERP,¹⁶ the maximum ERP at which WLS could operate in

¹⁴ See FCC File No. BPCDT-20090626ABL.

¹⁵ WABC today continues to receive calls from viewers experiencing problems with over-the-air signal reception. Accordingly, additional power likely would assist WABC in providing a receivable over-the-air signal to viewers throughout the five boroughs of New York City, including those viewers residing in neighborhoods nearest to the transmitter facilities at the Empire State Building. To this end, WABC is exploring mutual power increases with affected broadcasters and Industry Canada to continue to improve over-the-air service for its viewers. In order to more completely serve its viewing area, it is likely that WABC would need to increase its power beyond the current Zone 1 limits. However, as explained below, even if the FCC's proposal to increase the Zone I limits is adopted, the existing interference rules likely would limit WABC's ability to increase power pursuant to the revised rules.

¹⁶ See FCC File No. BLCDT-20090612AEE.

accordance with the requirements of FCC's rules without causing interference to other affected DTV stations. Within a few days after the DTV transition, WLS received over 20,000 viewer complaints regarding their inability to receive an over-the-air digital signal from WLS's post-transition 4.75 kW facility on channel 7.¹⁷ Accordingly, promptly after the DTV transition, WLS worked diligently with the FCC staff to develop a solution to the reception challenges faced by WLS's viewers.

To this end, WLS considered a number of options, including (i) increasing its power on channel 7 pursuant to interference agreements with affected television stations; (ii) finding another suitable channel for its post-transition DTV operations; (iii) operating "fill-in" translators on various channels; (iv) mutual power increases by WLS and other affected television stations; and (v) the use of a directional antenna for WLS.¹⁸ Based on engineering studies, WLS ultimately determined that operations on channel 44 presented the only technical option that likely could enable it to restore service to its former over-the-air analog viewers without causing more than 0.5% additional interference to any other affected television station. Accordingly, in July 2009, WLS filed a petition for rulemaking to substitute its channel 7 digital allotment with digital channel 44 at Chicago, Illinois ("Channel 44 Petition").¹⁹ The Channel 44 Petition was

¹⁷ WLS has documented its post-transition difficulties in numerous filings submitted to the FCC. *See, e.g.*, FCC File Nos. BDRTCDT-2009630AFT, BDSTA-20090908ABP, BDRTCDT-20090817ACC; BELDSTA-20100408ACD, BELDSTA-20101005AAU; WLS Television, Inc., Application for Experimental Authority to Increase ERP to 9.5 kW (filed July 21, 2009); WLS Television, Inc., Petition for Rulemaking to Amend the DTV Table of Allotments (filed July 24, 2009).

¹⁸ WLS's efforts to resolve its VHF reception problems have included, *inter alia*,: (1) an application to construct a new UHF replacement low power television translator station on channel 32 (FCC File No. BDRTCDT-20090630AFT), along with a request for Special Temporary Authority to construct the same (FCC File No. BLSTA-20090630AGB); and (2) as a temporary, interim solution, an application to obtain experimental authority to increase its ERP on DTV channel 7 to 9.5 kW, over its current authorized ERP of 4.75 kW (FCC File No. BEXP-20090619ADB).

¹⁹ *See* Channel 44 Petition.

granted on September 14, 2009 and, thereafter, WLS obtained a construction permit for the facilities described in the Channel 44 Petition (“Channel 44 Facility”).²⁰

WLS has been working diligently to construct the Channel 44 Facility, and has spent millions of dollars in connection with its conversion to channel 44.²¹ While WLS has been working as quickly as possible to complete construction of the Channel 44 Facility, it has been faced with many complications in such construction. For example, the Channel 44 Facility antenna has been custom designed for WLS’s operations, which has required the input of expert consultants and manufacturers, as well as the procurement of equipment made specifically for WLS. Construction of the Channel 44 Facility has been further complicated by the fact that the facilities will be located on the Willis Tower (formerly known as the Sears Tower), the tallest building in the western hemisphere.²² In order to install the channel 44 antenna on the Willis Tower, a helicopter will be required to lift the antenna and its mast to the top of the Willis Tower. This is an incredibly complicated physical and logistical task that requires coordination with the city of Chicago and is likely to involve the closure of several blocks in downtown Chicago. Moreover, weather conditions in Chicago are volatile and thus likely will impact WLS’s ability to finalize construction of the Channel 44 Facility. In short, since the DTV transition, WLS has

²⁰ See Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations. (Chicago, Illinois), MB Docket NO. 09-146, *Report and Order* (MB 2009); FCC File NO. BPCDT - 20091001ACI. WLS recently filed an application to modify the outstanding construction permit to increase the authorized power for the Channel 44 Facility. See BMPCDT-20110331ABW.

²¹ WLS currently is broadcasting using temporary facilities from the John Hancock Building on channel 44 pursuant to special temporary authority. See BDSTA-20100319AFB, as extended. WLS also is broadcasting from the Willis Tower on channel 7 pursuant to special temporary authority (rather than experimental authority) in order to enable continued provision of over-the-air service to those WLS viewers located beyond the coverage area served by the temporary channel 44 facilities at the John Hancock Building. See FCC File No. BDSTA-20091023ABZ, as extended.

²² See <http://www.willistower.com/> (“Standing at 1,450 feet and 110 stories high, Willis Tower is the tallest building in the western hemisphere.”).

expended substantial resources (financial, technical, labor and otherwise) and time to achieve its goal of serving its viewers with a reliable over-the-air DTV signal.

Given the uncertainty regarding broadcast use of the upper portion of the UHF spectrum, as well as the scope of the problems faced by WLS since the DTV transition, even assuming that WLS's operations on channel 44 resolve the reception problems faced by WLS's viewers as hoped,²³ it is not certain whether WLS will be permitted to operate on channel 44 in Chicago indefinitely. Indeed, because wireless spectrum needs are likely to be greatest in urban areas like Chicago, WLS is concerned that channel 44 may be among the channels initially considered by the Commission in this proceeding to be repurposed for wireless broadband uses.²⁴ In the unfortunate event that channel 44 becomes unavailable in Chicago or otherwise proves to be insufficient to enable WLS to fully restore service to its pre-transition over-the-air analog viewing area, WLS will once again be reviewing its options as to how to best serve its viewers, including returning to channel 7.²⁵

²³ WLS's experiences with the DTV transition demonstrate that it is possible that planned DTV facilities may not provide coverage as predicted on paper. Indeed, WLS was among the few television stations in the country to experience particularly significant problems with its DTV channel allotment, which was intended to provide coverage to its former over-the-air viewing area. Given that Chicago is one of the most congested markets in the country, WLS's options for resolving viewer reception issues were limited, and the Channel 44 Facility presented the only viable technical option that would permit WLS to increase power in accordance with the existing interference rules. WLS does not dispute that, on paper, the Channel 44 Facility appears to provide a viable option for it to restore over-the-air service to its viewers. WLS is hopeful that the Channel 44 Facility will solve the reception problems that have plagued it since the DTV transition such that it no longer will be necessary to operate on channel 7. However, as was the case with its post-transition operations on channel 7, WLS cannot be certain this is the case until it has commenced operations with, and conducted field tests of, the Channel 44 Facility.

²⁴ See Comments of NAB/MSTV at 16 ("Public statements by Commission officials indicate that the Commission has in mind—after conducting an incentive auction—providing wireless operations on contiguous channels in the upper portion of the UHF band. Accordingly, all television stations would be repacked into the lower range of the current television bands (up to a midpoint in the UHF band).").

²⁵ If WLS is required to return to channel 7, based on WLS's experience to date, it is highly likely that WLS would need to request authority to operate on channel 7 at a higher power

C. WPVI-TV, Philadelphia, Pennsylvania

WPVI has served the Philadelphia, Pennsylvania designated market area (“Philadelphia DMA”) on channel 6 since September 1947. WPVI began operations of a full-power DTV facility on channel 64, its pre-transition channel, in 1998.²⁶ Because channel 64 is an out-of-core channel, WPVI could not continue to operate on this channel following the DTV transition. Consequently, after significant deliberation, WPVI elected to operate its post-transition DTV facilities on VHF channel 6, its former analog channel, notwithstanding that WPVI had significant concerns about the channel’s post-transition viability.²⁷ On March 6, 2008, WPVI

than currently permitted under the applicable FCC rules in order to provide an over-the-air digital signal to its former analog viewing area.

²⁶ See FCC File No. BLCDDT-19981112KE.

²⁷ ABC struggled to find a channel for WPVI that would permit it to reach its current analog viewers and, reluctantly, chose channel 6, despite well-documented technical concerns about the channel’s post-transition feasibility. Because of the well-known issues surrounding the suitability of channel 6 and other low-VHF channels for DTV operations, ABC was compelled to forego making a channel election for WPVI in round one of the Commission’s channel election process and instead elected to participate in the second round of DTV channel elections (in lieu of selecting channel 6). ABC also protected its rights to select another channel in the second round by objecting to a negotiated channel election agreement (“NCA”) between two other Philadelphia-area stations.

ABC conducted multiple technical studies over an extended period of time in an attempt to locate another suitable channel for its post-transition DTV operations. The engineering studies demonstrated that special problems did, in fact, exist for low-VHF channels but that channel 6 was the only viable option from which WPVI could possibly replicate its analog service. In addition to the results of the engineering studies, ABC also balanced several other interests in reaching its decision to amend its channel election to channel 6, including (i) congested spectrum in the northeast corridor, (ii) the interests of WPVI’s viewers (and their interest in continuity of service), (iii) ABC’s interest in certainty and a speedy resolution, (iv) the interests of other stations and the absence of available post-transition DTV channel options in the nation’s fourth largest television market, (v) the NCA that effectively removed the only suitable replacement channel from the pool of available channels (which ABC initially opposed), and (vi) the general public interest. Indeed, ABC’s decision to elect channel 6 despite questions regarding the channel’s post-transition feasibility resolved a long-standing dispute in a manner that enabled the most television stations to serve the most people, and thus benefited other television stations as well as viewers in the Philadelphia DMA.

obtained a construction permit for a DTV facility with 7.56 kW ERP and commenced operations of this facility on June 12, 2009.²⁸

The unprecedented DTV transition confirmed ABC's concerns that, despite the fact that, given the circumstances, channel 6 was the best possible option that WPVI could chose for post-transition operations without protracting the channel selection process.²⁹ Unfortunately, the WPVI 7.56 kW facility was not sufficient to enable WPVI to serve all of its former analog viewers on channel 6. ABC worked with the FCC to help address the coverage deficiencies resulting from the channel 6 allocation and, as a result, WPVI currently is operating on channel 6 at 30.2 kW ERP pursuant to special temporary authority obtained on June 19, 2009.³⁰ ABC believes that the increase in ERP permitted by the STA has improved markedly the ability of WPVI's viewers to receive an over-the-air DTV signal. Although WPVI recently obtained a construction permit to operate at 30.2 kW, it is likely that additional power will be required in order to enable WPVI to further restore service to its former over-the-air analog viewing area.³¹ However, the FCC's existing interference rules likely will constrain WPVI's ability to apply for a further increase in power.³²

D. WTVD(DT), Durham, North Carolina

WTVD has served the Raleigh-Durham, North Carolina designated market area ("Durham DMA") on channel 11 since September 2, 1954, and commenced DTV operations on

²⁸ See FCC File Nos. BPCDT-20080208ADW and BLCDT-200906012ACL.

²⁹ See *supra* note 27.

³⁰ See FCC File No. BLDSTA-20090619ADQ.

³¹ Nearly two years after the DTV transition on June 12, 2009, WPVI continues to receive fifty to one hundred telephone calls a week regarding viewers' inability to receive an over-the-air signal.

³² WPVI is working in cooperation with affected broadcasters to mitigate interference problems, which may make it possible for WPVI to obtain a further increase in power.

channel 52, its pre-transition channel, in November 1999.³³ The initial channel 52 allotment was out of core and, like WPVI, WTVD was not permitted to remain on its initial allotment.

Accordingly, WTVD elected and was granted authority by the FCC to operate its post-transition DTV facilities on channel 11, its former analog channel. On September 25, 2008, WTVD obtained a construction permit for post-transition DTV facilities at 20.7 kW ERP.³⁴ WTVD commenced operations of these facilities on June 12, 2009.³⁵

Following the DTV transition, WTVD received many calls from viewers who were able to receive WTVD on analog channel 11 prior to the transition to DTV on June 12, 2009, but could no longer receive the WTVD signal on channel 11 after the transition. Accordingly, in October 2009, WTVD obtained special temporary authority to increase its power from 20.7 kW to 45 kW ERP. Thereafter, in August 2010, the FCC granted WTVD's long-pending application for a construction permit to operate the 45 kW facilities pursuant to an interference agreement with affected television stations. Although WTVD's DTV antenna can support a higher ERP than 45 kW, WTVD is unable to increase its power beyond 45 kW due to the existing rules regarding interference.

II. THE COMMISSION SHOULD ACT, ON A CASE-BY-CASE BASIS, TO RESOLVE PERMANENTLY THE PROBLEMS FACED BY TELEVISION STATIONS CURRENTLY USING VHF SPECTRUM BEFORE ADOPTING A FRAMEWORK TO RECAPTURE UHF AND VHF TELEVISION SPECTRUM FOR WIRELESS BROADBAND

The Commission is well-aware that, following the DTV transition, many viewers of television stations with VHF spectrum allocations have had significant problems receiving a reliable over-the-air digital signal.³⁶ As explained above, since the transition from analog to

³³ FCC File No. BLCDT-19991117ABU.

³⁴ FCC File No. BMPCDT-20080822AAF.

³⁵ FCC File No. BLCDT-20090612ACW.

³⁶ *See, e.g.*, Broadcast Spectrum NPRM at para. 42 (“We recognize that television broadcasters have had some difficulty in ensuring consistent reception of VHF signals”).

digital television, the ABC Owned Television Stations in New York, Chicago, Philadelphia and Raleigh-Durham have responded to many thousands of telephone calls from viewers complaining they could no longer receive ABC network or local station programming viewable prior to June 12, 2009. Indeed, the experiences of these ABC Owned Television Stations demonstrate that there is a large segment of the population that still depends on over-the-air reception for DTV service. As a result, the ABC Owned Television Stations continue to expend substantial resources (financial, technical and otherwise) to find technical solutions (e.g., power increases, channel changes, antenna modifications) that will enable them to serve in full their pre-transition over-the-air analog viewing areas. Unfortunately, the current FCC rules governing maximum power levels for VHF stations, as well as the rules governing interference, have hampered the ability of the ABC Owned Television Stations to completely restore television service throughout their viewing areas.³⁷

The Commission's proposal to increase the maximum ERP permissible for Zone I television stations, while helpful to a degree, is of limited benefit due to the restrictions on

³⁷ As explained in these Reply Comments, following the DTV transition, the ABC Owned Television Stations serving the New York, Chicago, Philadelphia and Raleigh-Durham markets experienced significant difficulties serving their former analog viewing areas with a reliable over-the-air digital signal. Each of these ABC Owned Television Stations has been able to increase power from that initially authorized for its DTV facilities on June 12, 2009 pursuant to special temporary authority (or in some cases, recently granted construction permits). However, the power increases, though helpful, have not resolved completely the viewer reception problems experienced in the markets served by the affected ABC Owned Television Stations. Indeed, additional power is critical to enable the ABC Owned Television Stations in these markets to improve VHF reception.

In addition, as noted above, if channel 44 becomes unavailable in Chicago or otherwise proves to be insufficient to enable WLS to fully restore service to its pre-transition over-the-air analog viewing area, WLS will once again be reviewing its options as to how to best serve its viewers, including returning to channel 7. If WLS is required to return to channel 7, WLS likely will need to increase its power beyond the Zone II limit currently specified in the FCC's rules in order to serve its viewers. Accordingly, Disney urges the FCC to consider waivers of the Zone II power limits on a case-by-case basis.

interference to adjacent and co-channel operations.³⁸ Because the ability of a television station to increase its power is subject to the existing interference rules, it is very possible that, notwithstanding an increase in the maximum allowable ERP for Zone I VHF stations, the interference rules will preclude certain stations from increasing power to the level necessary to improve service in any meaningful manner. For example, in order for WPVI to increase its power to 32.0 kW ERP, it was necessary to negotiate an informal interference agreement with two co-channel stations in nearby television markets. Thus, in this case, even if the FCC were to increase the Zone I power limits, WPVI would not be able to take advantage of such increase unless the FCC also waives the interference rules to permit more than 0.5% additional interference to affected stations. Similarly, WABC, which is currently operating at 26.9 kW, is constrained by the interference rules from further increasing its power to the level necessary to serve its former over-the-air analog viewing area. Given these constraints, for VHF stations currently operating in the overcongested spectrum of the Northeast corridor and other major metropolitan areas like Chicago, the Commission should consider waivers of the interference rules on a case-by-case basis where such waiver would serve the public interest by enabling a station to restore service to virtually all of its former analog viewing area. Indeed, absent the ability for the Media Bureau staff to grant case-by-case waivers of the interference rules, in certain cases, the proposed increase in power for Zone I VHF station will be ineffective to improve VHF reception in any meaningful manner.

Moreover, before permitting any additional stations to relocate to VHF spectrum, the Commission “should actively work with broadcasters to find case-by-case opportunities for

³⁸ See, e.g., Comments of Local Television Broadcasters at 27 (“even if the Commission’s rules change to allow higher-power operations, the overwhelming majority of high-VHF licensees would be unable to maximize power due to the increased interference that would be caused to other licensees.”).

improvements to existing VHF stations.”³⁹ To this end, the FCC should ensure that television stations currently operating on all channels throughout the VHF band (including channel 6)⁴⁰ have had the opportunity to restore service to their former analog viewing areas, (e.g., through power increases, case-by-case waivers of the interference rules or relocation to UHF channels when and if such channels become available). Indeed, the Commission should avoid taking any action that would enable a station that has been adequately serving its former over-the-air analog viewing area since the DTV transition to increase its power or to relocate to the VHF band at the expense of the ability of a station that has not yet resolved the VHF reception problems suffered by its viewers.⁴¹

³⁹ Comments of LIN Television Corporation at 13. *See also* Comments of Cox Media Group, Inc. at 24 (“Cox invites the FCC to focus its efforts on taking steps to make DTV use of the VHF band more feasible. . . ., however, such efforts should be geared only towards improving service to existing viewers, not towards furthering a spectrum repack plan.”).

⁴⁰ Certain commenters have urged the Commission to refrain from authorizing power increases for television stations operating on channel 6. *See* Comments of The Association for Public Television Stations, National Public Radio, the Public Broadcasting Service and the Corporation of Public Broadcasting at 15-17; Comments of the Minority Media and Telecommunication Council at 6-9. Although Disney is sensitive to the concerns raised by these commenters, it is critical that the FCC permit stations like WPVI to implement the technical solutions (including power increases) necessary to provide over-the-air digital service to their former analog viewing areas. Thus, to the extent the FCC amends its rules as proposed, Disney urges the FCC to permit power increases for all television stations currently operating in the VHF bands (including those on channel 6), provided that such power increases are aimed at resolving VHF reception problems arising from the significant losses in signal strength suffered by digital VHF stations.

⁴¹ *See* Broadcast Spectrum NPRM at para. 49. (“the interests of making the VHF stations more useful to stations and consumers outweigh [the] concerns about limiting the opportunities of other stations.”)

III. IN ORDER TO ENSURE THAT CONSUMERS PURCHASE THE APPROPRIATE ANTENNA FOR THEIR VIEWING NEEDS, THE COMMISSION SHOULD EXPLORE MANDATORY LABELING OF ANTENNAS AND REQUIRE THAT ANTENNAS MEET STANDARDS FOR RECEPTION OF BOTH VHF AND UHF CHANNELS

In the NPRM, the Commission proposes to establish performance standards to ensure that indoor antennas are effective for VHF channel reception.⁴² As an initial matter, Disney agrees with the comments of NAB/MSTV that, in order to mitigate customer confusion, the FCC should consider mandatory labeling of antennas as a means to advise consumers of the bands that a particular antenna can receive.⁴³ Moreover, in order to further reduce consumer confusion, the Commission should require that antennas marketed to consumers meet established standards for reception of both VHF and UHF channels alike. The FCC also should require that antenna manufacturers implement a mechanism (e.g., labeling or other means) to ensure that antennas are not sold in markets where such antennas will be ineffective to receive the television stations in that market (i.e., an indoor antenna that is incapable of receiving VHF stations should not be marketed in television markets where any television station operates using VHF spectrum).

In the experience of the ABC Owned Television Stations, many of viewers who have difficulty receiving the post-transition DTV signals of WABC, WLS, WPVI or WTVD use indoor antennas.⁴⁴ Indeed, in the major metropolitan of New York, Chicago, Philadelphia, as well as certain areas of Raleigh-Durham, it is not uncommon for viewers to reside in apartment buildings or other multi-dwelling units, such that viewers of the ABC Owned Television Stations

⁴² See Broadcast Spectrum NPRM at para. 54.

⁴³ See Comments of NAB/MSTV at 22-23.

⁴⁴ For example, it has been WPVI's experience that the majority of viewers experiencing problems receiving an over-the-air signal from the station have reported that they use indoor antennas, a large portion of which are UHF-only antennas or are inadequate for reception of low-band VHF stations. Similarly, almost all of WTVD's viewers that have called the station regarding reception problems have reported that they are using indoor antennas. See NPRM, para. 43 (observing that "VHF TV reception difficulties appear to be most common among consumers who use indoor antennas").

in these markets have had no choice but to utilize indoor antennas in order to receive an over-the-air digital signal.⁴⁵ Unfortunately, as the Commission observes, indoor antennas often are not marketed for reception of VHF channels (e.g., channel 6, the channel allocated to WPVI).⁴⁶ Moreover, many viewers are unlikely to be aware of disparities in the quality of indoor antennas, and even less likely to be aware of the fact that certain antennas are not capable of receiving a reliable signal from a television station with a VHF channel allocation. Requiring labels on antennas will enable consumers to purchase the appropriate indoor antenna based on viewing needs, thereby reducing consumer confusion. Indeed, labeling of antennas will mitigate the possibility that a viewer will purchase a UHF-only antenna where only an antenna capable of receiving both UHF and VHF channels is required to receive over-the-air reception of all television stations in the viewer's market. Importantly, by establishing rules that require antennas to be capable of receiving all available channels in the market, in both the UHF and VHF bands, the Commission can ensure that all antennas marketed to consumers meet viewing needs, and that antennas are not sold to consumers in television markets where the antennas will be ineffective to receive all stations in the market. Together, these actions will mitigate consumer confusion more than the use of labels alone.

IV. CONCLUSION

The Walt Disney Company understands and appreciates the need to expand wireless broadband services. However, it is imperative that the Commission ensure that television stations currently operating on all channels throughout the VHF band have had the opportunity to restore service to their former analog viewing areas (e.g., through power increases, case-by-case waivers of the interference rules or relocation to UHF channels when and if such channels

⁴⁵ For example, many multi-dwelling units restrict the ability of residents to install outdoor antennas.

⁴⁶ See Broadcast Spectrum NPRM at para. 4.

become available). In addition, in order to facilitate the purchase of appropriate antennas for reception of VHF television service by consumers, the Commission should explore mandatory labeling of antennas.

Respectfully submitted,

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